

REMARKS

Restriction Requirement

The official action included a restriction requirement between claims 1-30 and claims 31-42. As noted, the attorney provisionally elected claims 1-30 for examination in this application, and that election is now confirmed. The action also specified a number of different species under the invention of claims 31-42, which define methods of exercising. Since the undersigned attorney has elected the invention of Group I, claims 1-30, and has now affirmed this election, it is respectfully submitted that no further response is needed at this time regarding these species under claims 31-42. These claims have been withdrawn from further consideration by the Examiner.

Specification and Claims, Support for Limitations

This responds to paragraph 6 of the action. Claim 11 has been amended and no longer recites "hubs".

Regarding claims 26 and 27, an amendment is now made to page 13 of the specification to recite these features.

Regarding claim 28, a recitation of this feature is added on page 20.

Regarding claim 30, additions are made to the specification at pages 15 and 18 to clearly recite these features.

Claim Objections

These objections have been overcome by amendments to the claims, i.e. claims 4, 11 and 24. The recitation of "hubs" in claim 11 was a mistake. The series of holes recited in claim 24 is the same as the series of holes in claim 5, as presumed by the Examiner.

§112 Rejections

Regarding claim 23, the term "sufficiently stiff" has been deleted.

In claim 29, the term "a sufficient number" is now deleted and the claim now recites "at least four of said upright bar support frame members". It is clear from the specification and drawings that four of the upright bar support frame members 48 are required for exercises in which flexible bars are positioned on each side of a person during exercising. See, for example, Figure 16 (two upright bar support frame members for each of two bars 50), Figure 3, and Figure 1.

Rejections Under §102

Claim 1 and many dependent claims were rejected under 35 U.S.C. §102 as supposedly anticipated by Webster Patent No. 5,395,296. For purposes of this rejection, the Examiner has read the applicant's "collection of flexible bars" as broad enough to

include the bungee cords of the Webster patent.

This rejection was discussed with Examiner Hwang in a brief telephone conference on January 12, 2007. The applicant proposed the amendment now made in the fourth paragraph of claim 1, stating that the bar support means allow "the bars to pull and slide inwardly relative to the frame as the bars are flexed during use". The Examiner agreed that this would remove claim 1 and its dependent claims from any anticipation by Webster.

Additional amendments are also made to claim 1. The frame of claim 1 is now recited as "defining a space within which a user can stand and is positioned for exercising." Also, the collection of flexible bars are stated as being essentially straight when unflexed, while being sufficiently flexible to bend when engaged in exercising movements by a user.

That the bars 50 are essentially straight when unflexed is shown clearly in Figure 2 (all bars 50), Figure 3A (compare Figures 3A and 3B and the discussion at pages 18-19 of the specification), and Figure 4 (bar behind woman). It is not believed necessary, but wording can be added to the specification in this regard if deemed desirable by the Examiner.

Claim 1's last paragraph is also amended in regard to the bar support means.

These changes very clearly remove the invention of the claims from the exercise apparatus disclosed in Webster, as well

as from the various articles described in the other prior art. Webster shows bungee cords in a spider web-like network, stretched within a frame in which an exercising user can be positioned, as indicated schematically in Webster's Figures 7A-7I. Webster provides for a different type of exercising, based on bungee cords or "shock cords", which are elastic bands each stretched between two points in Webster's frame.

In any event, the description in amended claim 1 that the bars, via the frame's support means, pull and slide inwardly relative to the frame as the bars are flexed, defines a type of exercising device very different from that of Webster, and as the Examiner indicated on the telephone, this would distinguish from Webster at least in regard to the §102 anticipation rejection.

Rejection of Claims Under §103

Claims 3, 7, 28 and 30 were rejected as obvious over the Webster patent alone. The rationale for this rejection depends on the rationale for Webster as anticipating claims 1, 2, 5, 6 et al., but with the changes to claim 1 and the discussion above, it is clear that Webster disclosed an exercising device which is far different from that now claimed. Claim 1 (and all claims depending from claim 1) now not only claims "flexible bars" (which do not read on bungee cords as this term is read in light of the specification and its characterization of the "bars"), but

also emphasizes the nature of those bars by stating that the bar support means engages the bars near both ends of the bars and allows the bars to pull and slide inwardly relative to the frame as the bars are flexed. Further, claim 1 provides that the bar support means are in a plurality of locations on the frame to enable the user to selectively position one or more bars in a multiplicity of different locations at different selected heights as well as at different selected positions along the length of the frame, for a plurality of different exercises. Clearly Webster does not disclose such a system. Webster discloses a type of exercising device, but one that is far different from what is contemplated by the invention and reflected in the claims. Webster's principle is based on stretchable, elastic exercise elements, whereas the applicant's principle involves bending of bars that each have stiffness but a prescribed degree of flexibility to provide non-impact exercise.

Claim 3 depends from claim 1 and requires that the flexible bars are formed of a hard plastic material. The word "hard" is added to the claim, and this is disclosed by the fact that the bars can be made of the hard plastic material acetal, as well as the numerous drawings showing the bars as deflecting slightly (see Fig. 1 and 3, for example) under the weight of a user. Claim 3 has no relation to stretched elastic members.

Claim 7 depends from claim 6, which depends from claim 5,

and again recites that the bars are formed of a hard plastic material. Claim 6 recites the holes in the bar support frame members with beveled or rounded edges to prevent scraping and abrasion of the surface of the bar during exercising, again reflecting the hard but flexible bars and the fact that there is relative motion between the bars and the holes in the bar support frame members, which there obviously would not be in the case of bungee cords stretched between two points and secured at both ends to those points. Claim 5 describes the upright bar support frame members as the bar support means, with the holes within which the two ends of a bar are placed. As noted, claim 5 has subject matter which forms a part of claim 7. Both claims 5 and 6 were included with the claims rejected as allegedly anticipated by Webster, and this is not understood in view of the recitation of the bar support frame members with a series of holes into which the ends of the bars are placed, and the rounded or beveled edges to prevent scraping or abrasion, etc.

In any event, it seems clear that claims 1 through 7 are clearly allowable over the prior art, and allowance is solicited.

Claim 28 should also be allowed, particularly in view of the changes to claim 1. This claim recites pairs of flexible bars of substantially equal stiffness, demonstration of which is abundant in the drawings and also in the description of the various exercises that can be accomplished using these bars. Webster

does not describe exercising bars as this term should be understood, particularly in light of the amendments.

Claim 29 depends from the subject of claim 5 and seems clearly entitled to allowance.

Claim 30 depends from claim 29 and adds further distinguishing subject matter relating to the number of the upright bar support frame members, providing the versatility in the system for the exercises that are described in the specification. Note particularly that Webster does not show upright bar support frame members each having about six holes for different bar positions, particularly not meeting the language of the last paragraph of claim 1 as amended. Certainly Webster does not disclose the rationale of the invention in providing at least about six holes for different bar positions, because Webster does not even disclose bars, let alone bars that can be selectively changed and positioned via holes in upright support members.

Claims 1, 3 and 4 were further rejected as allegedly obvious over the Stevens design patent in view of Cecka Patent No. 4,212,461. This rejection is respectfully traversed and is submitted not to fit the claims as currently amended.

The Stevens design patent may have a few features that are incidentally in common with the claimed invention, but this design patent is clearly far afield from the purposes and principles of the invention and is in no stretch of the

imagination an exercising system.

Without arguing the distinctions from Stevens which manifestly existed in original claim 1, this discussion will focus on the changes to claim 1. First, claim 1 now recites that the frame defines a space in which a user can stand and be positioned for exercising. Stevens does not show a frame having such a size or configuration, unless the archery bows which Stevens intends to carry in his rack are of gigantic proportions. Secondly, the collection of flexible bars are recited as being essentially straight when unflexed, as well as including bars in a range of different stiffnesses. Stevens neither shows nor suggests either.

Moreover, claim 1 requires the bar support means being at a plurality of different locations on the frame for selectively positioning one or more bars in a multiplicity of different locations at different selected heights and different selected positions along a length of the frame. This is not present in Stevens, whose device inherently would provide for archers' bows to be laid side by side, but the only choice would be which position laterally along the rack one would lay a bow. There is no suggestion of height selection, or provision for it.

The Cecka patent simply discloses a structural material for producing various items of sporting equipment. Clearly the addition of Cecka's teaching to that of Stevens would not add up

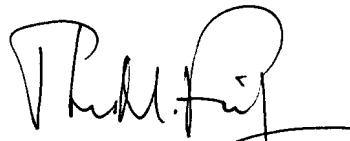
to what is being claimed in claim 1, 3 or 4. The combination could not result in what is being claimed. The important point, however, is that this is an obviousness rejection, wherein the two allegedly combinable references must in some way suggest the invention. A patent on a layered material for use in producing sporting equipment such as tennis racquets, along with a patent on an angled rack to support archers' bows, has no relation to an exercising machine or system such as described in claim 1. Where is the teaching in Stevens as a primary reference, that would suggest an exercising system such as recited in claim 1? Stevens' design, covered by a design patent, appears to be an angled archer's rack made out of PVC irrigation pipe. It has absolutely no relation to exercising equipment and therefore little, if any, power to suggest the invention, even if combined with another reference. When that other reference merely relates to a plastic material, there is really nothing here to suggest the applicant's invention in any way. In consideration of obviousness, the intended use of the invention is relevant; in this situation, as in many obviousness rejections, the art does not show all of the components of the claimed invention, and it is an impermissible stretch of logic to assume that to provide the missing elements through references having no relation to the intended purpose of the invention, provides a *prima facie* case of obviousness. It does not, especially in this case where so many

elements relative to the device as an exercising machine and one of versatility for many different exercises, are missing from both references. There is nothing present in either reference to suggest a combination of these unrelated arts to form an exercising machine, and the claimed elements are missing from the references in any event. It seems clear that claims 1, 3 and 4 are allowable over these references.

All of the claims under consideration, claims 1-30, are now believed allowable. Allowance is solicited.

However, if the Examiner believes any issue remains, he is asked to telephone the undersigned attorney before issuing a further action.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Thomas M. Freiburger', with a stylized flourish at the end.

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